(1)

Supreme Court, U.S.
FILED

981821 MAY 11 1999

OFFICE OF THE CLERK

Docket Number _____

In The

SUPREME COURT OF THE UNITED STATES

October Term 1998

In Re FRANK PAUL LUKACS,

Petitioner

On Petition for Writ of Mandamus
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF MANDAMUS

Frank Paul Lukacs, J.D., M.B.A.
P. O. Box 3143
McLean, Virginia 22103-3143
(703) 481-0825
Petitioner Pro Se

83pp

QUESTIONS PRESENTED FOR REVIEW

I. Under strict scrutiny, are the racial and gender and national origin classifications of the United States federal government's affirmative action and diversity programs for minorities and females and hispanics narrowly tailored measures that further compelling governmental interests, as per *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097, 132 L.Ed.2d 158, 63 USLW 4523.

II. Is it an abuse of discretion for a district court to order the parties to file no further pleadings or motions or affidavits or appeals authorized by the FRCP or Title VII, or to dismiss and refuse to consider filed and docketed pleadings, motions, affidavits, or appeals authorized by the FRCP or Title VII, including "amend[ing] the party's pleading once as a matter of course at any time before a responsive pleading is served", or motions to "amend the party's pleading by leave of court ... which shall be freely given when justice so requires", or motions for consolidation in "actions involving a common question of law or fact pending before the court", or motions for a preliminary or a permanent injunction on the racial and gender and national origin classifications of the United States federal government's so called affirmative action and diversity programs?

LIST OF ALL PARTIES TO THE PROCEEDING

FRANK PAUL LUKACS
P.O. BOX 3143
MCLEAN, VA. 22103-3143

Petitioner,

v.

HONORABLE DONNA E. SHALALA
SECRETARY DHHS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
HUBERT H. HUMPHREY BUILDING
ROOM 615F
200 INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20201

Respondent

AND

DR. HAROLD E. VARMUS
DIRECTOR NIH
NATIONAL INSTITUTES OF HEALTH
BUILDING 1, ROOM 114
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

DR. RICHARD KLAUSNER
DIRECTOR NCI
NATIONAL CANCER INSTITUTE
BUILDING 31, ROOM 11 A 48
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

BEVERLY LOTT WYATT
CHIEF, RESEARCH CONTRACTS BRANCH
NATIONAL CANCER INSTITUTE
EXECUTIVE PLAZA SOUTH, ROOM 620 D
6120 EXECUTIVE BOULEVARD
ROCKVILLE, MARYLAND 20852-7224

Respondent

AND

DAVID SNIGHT
CHIEF, RESEARCH CONTRACTS BRANCH
DIVISION OF CONTRACTS AND GRANTS, OA, OD
NATIONAL INSTITUTES OF HEALTH
ROOM 6 E 01
6100 EXECUTIVE BOULEVARD
ROCKVILLE, MARYLAND 20852

Respondent

AND

PHILIP AMORUSO
EXECUTIVE DIRECTOR NCI
NATIONAL CANCER INSTITUTE
BUILDING 31, ROOM 11 A 48
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

MAXINE RICHARDSON
EQUAL EMPLOYMENT OPPORTUNITY MANAGER NCI
NATIONAL CANCER INSTITUTE
BUILDING 31, ROOM 10 A 33
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

MARIANNE WAGNER
PERSONNEL OFFICER NCI
NATIONAL CANCER INSTITUTE
BUILDING 31, ROOM 3 A 19
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

DIANE ARMSTRONG
DIRECTOR EQUAL EMPLOYMENT OPPORTUNITY
NATIONAL INSTITUTES OF HEALTH
BUILDING 31, ROOM 2B34
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

AND

JAMES KING
DIRECTOR, OPM
OFFICE OF PERSONNEL MANAGEMENT
UNITED STATES GOVERNMENT
1900 E STREET N.W., ROOM 5A06A
WASHINGTON, D.C. 20415

Respondent

AND

SANDRA THOMAS
EQUAL EMPLOYMENT OPPORTUNITY MANAGER NCI
NATIONAL CANCER INSTITUTE
BUILDING 31, ROOM 10 A 33
9000 ROCKVILLE PIKE
BETHESDA, MARYLAND 20892

Respondent

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO PROCEEDING ii

TABLE OF CONTENTS vi

TABLE OF CITED AUTHORITIES viii

CITATIONS OF THE REPORTS 1

BASIS FOR JURISDICTION 1

CONSTITUTIONAL PROVISIONS, STATUTES, AND

REGULATIONS INVOLVED IN THE CASE 1

STATEMENT OF THE CASE 2

REASONS FOR ALLOWANCE OF THE WRIT 14

CONCLUSION 28

APPENDIX A A1

APPENDIX B B1

APPENDIX C C1

APPENDIX D D1

APPENDIX E E1

APPENDIX F F1

APPENDIX G G1

APPENDIX H H1

APPENDIX I I1

APPENDIX J J1

APPENDIX K K1

APPENDIX L L1

APPENDIX M M1

TABLE OF CITED AUTHORITIES

Case Citations ..... Page Number

Abdullah v. Gatto, 773 F.2d 487, at 488 (2d Cir. 1985) (per curiam) 29

Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097, 132 L.Ed.2d 158, 63 USLW 4523, (U.S.Colo., Jun 12, 1995) 12, 27, 30

Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530 (9th Cir. 1995) 16

Austin v. Reynolds Metals Co., 327 F.Supp. 1145 (E.D. Va. 1971) 21

Baker v. Buckeye Cellulose Corp., 856 F.2d 167, 169-170 (11th Cir. 1988) 28

Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991) 19

Blackwelder Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189 (4th Cir. 1977) 12, 28

Bounds v. Smith, 430 U.S. 817, 821, 97 S. Ct. 1491, 1994, 52 L.Ed. 2d 72 (1977) 28

Caine v. Hardy, 905 F.2d 858, 863 (5th Cir. 1990) 15

Camp v. Gregory, 67 F.3d 1286, 1289 (7th Cir. 1995) 17

Capps v. Eggers, 782 F.2d 1341, 1342 (5th Cir. 1986) 24

Coral v. Gonse, 330 F.2d 997 (4th Cir. 1964) 18, 21

Doe v. Duncanville Indep. Sch. Dist., 994 F.2d 160 (5th Cir. 1993) 27

Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995) 15

Driscoll v. Smith Barney, Harris, Upham & Co., 815 F.2d 655, 659-660 (11th Cir. 1987) 15, 17

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed. 2d 222 (1962) 19

Fortner v. Thomas, 983 F.2d 1024, 1032 (11th Cir. 1993) 16, 17

Fox v. Sierra Dev. Co., 876 F.Supp. 1169, 1170-1171 (D. Nev. 1995) 16

General Contractors v. Jacksonville, 508 U.S. 655, 113 S.Ct. 2297, 124 L.Ed.2d 586, (1993) 26

Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) 20

Hanes Cos. v. Ronson, 712 F. Supp. 1223, 1230 (M.D.N.C. 1988) 24

Hill v. City of Indianapolis, 17 F.3d 1016, 1018 (7th Cir. 1994) 16

In re Green, 669 F. 2d 779, at 786, (D.C.Cir. 1981) (per curiam) 29

In re Halliburton Co., 991 F.2d 810, 1993 WL 118929, (Fed.Cir.(Tex.), March 12, 1993) 14

In re Martin-Trigona, 737 F.2d 1254, 1261-1262 (2d Cir. 1984) 13

Johl v. Johl, 788 F.2d 75 (2d Cir. 1986) 13

Johnson v. Mississippi Valley Barge Line Co., D.C.Pa. 1963, 34 F.R.D. 140 24

Katz v. Realty Equities Corp. of N. Y., 521 F.2d 1354, 1356 (2d Cir. 1975) 24

Kroger Co. v. Adkins Transfer Co., 284 F.Supp. 371, 374 (D.C. Tenn. 1968) 17

Lodge Hall Music, Inc., v. Waco Wrangler Club, Inc., 831 F.2d 77 (5th Cir. 1987) 22

Louisiana v. Litton Mortgage Co., 50 F.3d 1298, 1303 (5th Cir. 1995) 19

MacDraw, Inc. v. CIT Group Equipment Financing, Inc., 73 F.3d 1253, 1256 (2nd Cir.(N.Y.) 1996) 13

Masterson v. Atherton, D.C.Conn. 1963, 223 F.Supp. 407, affirmed C.A.2d, 1964, 328 F.2d 106 24

Mayes v. Leipsiger, 729 F.2d 605, 607 (9th Cir. 1984) 16

McClellon v. Lone Star Gas Co., 66 F.3d 98, 103 (5th Cir. 1995) 20

McGluckin v. Smith, 974 F.2d 1050, 1055 (9th Cir. 1992) 21

Midwest Community Council, Inc. v. Chicago Park Dist., D.C.Ill. 1983, 98 F.R.D. 491 25

Miles v. Dep't of Army, 881 F.2d 777, 781 (9th Cir. 1989) 17

Miller v. Holiday Inns, Inc., 436 F.Supp. 460 (E.D. Va. 1977) 21

Miller v. United States Postal Service, 729 F.2d 1033, 1036-1037 (5th Cir. 1984) 24

Milltex Industries Corp. v. Jacquard Lace Co., Ltd., 55 F.3d 34, at 39 (2nd Cir.(N.Y.) 1995) 13

3 Moore's Federal Practice, § 15.02 [1] (Matthew Bender 3d ed.) 14

3 Moore's Federal Practice, § 15.10 (Matthew Bender 3d ed.) 14

3 Moore's Federal Practice, § 15.11 (Matthew Bender 3d ed.) 15, 17

3 Moore's Federal Practice, § 15.14 [1] (Matthew Bender 3d ed.) 18, 19

3 Moore's Federal Practice, § 15.15 [1] (Matthew Bender 3d ed.) 20

3 Moore's Federal Practice, § 15.15 [3] (Matthew Bender 3d ed.) 21

8 Moore's Federal Practice, § 42.10 [1] [c] [iv] (Matthew Bender 3d ed. 1997) under section entitled "Multiple Filings by One Plaintiff May be Consolidated" 24

11 Moore's Federal Practice, § 56.30 [8] [a] [i] (Matthew Bender 3d ed. 1997) under section entitled "[a] Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of Civil

Procedure May Influence Summary Judgment Decisions [i] Pleadings Frame Dispute and Consequently Affect Materiality" 21

11 Moore's Federal Practice, § 56.30 [8] [a] [iii] (Matthew Bender 3d ed. 1997) under section entitled [iii] Motions to Amend Pleadings May Narrow or Broaden Factual and Legal Questions and Can Therefore Affect Summary Judgment" 21

13 Moore's Federal Practice, § 65.21 [1] (Matthew Bender 3d ed.) 28

Moore's Federal Practice, Federal Civil Rules 1997, by James Moore, published by Matthew Bender & Company, New York, page 102, §7.3 13

Moore's Federal Practice, Federal Civil Rules 1997, by James Moore, published by Matthew Bender & Company, New York, page 617, §56.3 [6] Piercing the Pleadings; Effect of Verified and Unverified Pleadings 23

Moore's Federal Practice, Federal Civil Rules 1997, by James Moore, published by Matthew Bender & Company, New York, page 696, §65.3 27

Moy v. United States, 906 F. 2d 467, 470 (9th Cir. 1990) 28

Parker v. Fort Worth Police Dep't., 980 F.2d 1023, 1026 (5th Cir. 1993) 21

Procup v. Strickland, 792 F.2d 1069, at 1078 (11th Cir. 1986) (en banc, per curiam) ... 29

Prudential Sec. Ltd. Partnership Litig., 158 F.R.D. 562, 567-568 (S.D.N.Y. 1994) 15

Richardson Greenshields Securities Inc. v. Lau, 825 F.2d 647, at 652 (2d Cir. 1987) 13

Ross v. Franzen, 777 F.2d 1216, 1222 (7th Cir. 1985) 18

Rum Creek Coal Sales v. Caperton, 926 F.2d 353, 359 (4th Cir. 1991) 28

Salahuddin v. Cuomo, 861 F.2d 40, 42-43 (2d Cir. 1988) 20

Schiffels v. Kemper Fin. Serv., Inc., 978 F.2d 344, 353-354 (7th Cir. 1992) 15, 17

Schoenberg v. Shaposlky Publishers, Inc., 971 F.2d 926, 936 (2nd Cir.(N.Y.) 1992) 13

Sheinkopf v. Stone, 927 F.2d 1259 (1st Cir. 1991) 22

Sohns v. Dahl, 392 F.Supp. 1208 (W.D. Va. 1975) 18

Stewart v. RCA Corp., 790 F.2d 624, 631 (7th Cir. 1986) 15

Thomas v. Deason, D.C.Ky. 1970, 317 F.Supp. 1098, 1099. 23

United States ex rel. Tucker v. Thomas Howell Kiewit (USA) Inc., 149 F.R.D. 125 (E.D. Va. 1993) 18

Wallace v. Chrysler Credit Corp., 743 F.Supp. 1228 (W.D. Va. 1990) 18

Weitort v. A. H. Bull & Co., D.C.Pa. 1961, 192 F.Supp. 165 25

Williams v. Wilkerson, 90 F.R.D. 168 (E.D. Va. 1981) 18

9 *Wright & Miller, Federal Practice and Procedure*: Civil 2d § 2383 (1995) ... 23, 24

Zaidi v. Ehrlich, 732 F.2d 1218, 1220 (5th Cir. 1984) 18

Fifth Amendment Due Process Clause of the United States Constitution 1, D1

Fourteenth Amendment Equal Protection Clause of the United States Constitution 1, D1

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964 ..... 2, 5, 7, 10, 23, 28, 29, D2, M1

42 U.S.C. §2000e-2 Unlawful Employment Practices 2, D12, M1

5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d) 2, D3, M1

5 C.F.R. §720.202 (a), 5 C.F.R. §720.202 (e), 5 C.F.R. §720.205 (c) 2, D4, M1

29 C.F.R. § 1614.408 Civil action: Title VII, Age Discrimination in Employment Act, and Rehabilitation Act 2, 5, 7, 10, D6, M4

29 C.F.R. 1614.108 Investigation of Complaints 2, 3, 11, D9, M4

Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM) 2, D6, M2

Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA) 2, D9, M6

CITATIONS OF THE REPORTS

The Order of the United States District Court, District of Maryland, dated October 13, 1998 in PJM-96-2913 is attached as Appendix A.

Petitioner appeals from the Fourth Circuit Court of Appeals judgment *In Re Frank Lukacs*, Petitioner, Case Number 98-2537, CA-96-2913-PJM, entered on November 30, 1998 (Appendix B).

Petitioner's Petition for Rehearing in Case Number 98-2537 was denied by the Fourth Circuit Court of Appeals on February 10, 1999 (Appendix C).

BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 1651.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

The citations of the relevant Constitutional provisions, statutes, and regulations involved in the case follow, with their pertinent text set out verbatim in the appendix (Appendix D).

Fourteenth Amendment Equal Protection Clause of the United States Constitution

Fifth Amendment Due Process Clause of the United States Constitution

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964

5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d)

5 C.F.R. §720.202 (a), 5 C.F.R. §720.202 (e), 5 C.F.R. §720.205 (c)

29 C.F.R. § 1614.408 Civil action: Title VII, Age Discrimination in Employment Act, and Rehabilitation Act

Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM)

Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA)

29 C.F.R. 1614.108 Investigation of Complaints

42 U.S.C. §2000e-2 Unlawful Employment Practices

STATEMENT OF THE CASE

Petitioner from the date of his first Equal Employment Opportunity ("EEO") complaint at the National Institutes of Health ("NIH") in January of 1991, despite his having applied on an average of about once every month for advertised job vacancy announcements and benefits, and having timely filed over sixty separate EEO complaints "within 45 days of the date of the matter alleged to be discriminatory" as per 29 C.F.R. § 1614, on about fifty of which EEO complaints there was

never any of the 29 C.F.R. § 1614 mandatory processing and investigation by the agency, (See Appendix D) has never once in all this time ever been selected for a so called affirmative action designated or diversity designated or Federal Equal Opportunity Recruitment Program ("FEORP") designated or Affirmative Employment Program ("AEP") designated job opening or benefit, which are in effect set aside for minorities and women and hispanics, at the NIH, at DHHS, or anywhere else in the entire United States federal government.

Petitioner is a member of a protected group, since petitioner is a white male. Petitioner has applied for numerous job vacancy announcements and benefits. Petitioner was qualified for these numerous job vacancy announcements and benefits. Petitioner was rejected for these numerous job vacancy announcements and benefits. These positions or benefits either remained open and the employer continued to seek applicants, or else the positions or benefits were given to members outside of the protected group of white males. Petitioner was rejected for these positions or benefits under circumstances giving rise to an inference of unlawful discrimination, in particular all of the circumstances and elements of so called affirmative action programs, diversity programs, FEORP, and AEP.

Defendants have not articulated any, much

less any legitimate, nondiscriminatory reason for fifty of the employment actions or denial of benefits. In those few cases where Defendants have articulated reasons for the employment actions or denial of benefits, defendants' reasons were a mere pretext for discrimination or simply not credible.

Petitioner maintains that because he is a caucasian male, and is over forty years of age and is a first generation legal immigrant of Hungarian ancestry, he has been limited to a few job series and benefits which are not affirmative action designated or diversity designated or FEORP designated or AEP designated. He has been forced to follow a career path that is outside of the "mainstream occupations", or highly populous occupations which tend to lead to higher level positions in the agency.

Unfortunately, the filing of equal employment opportunity complaints of discrimination challenging the legality and constitutionality of such discrimination resulted in numerous instances of retaliation, reprisal, harassment, the creation of a hostile working environment, and as everyone had warned Petitioner aforehand, his eventual quit or be fired constructive discharge.

The district court in PJM-96-2913 on June 30, 1997 ordered that "the parties are directed to file no further motions", (See Appendix A.), including motions to amend the

complaint according to FRCP Rule 15 **"once as a matter of course at any time before a responsive pleading is served"**. Petitioner filed an appeal and a writ of mandamus with the United States Court of Appeals for the Fourth Circuit (USCAFC).

In the meantime, to meet the deadlines imposed by 42 U.S.C. 2000e-16 (Title VII) and 29 C.F.R. § 1614 (See Appendix D.) **"to file a civil action in an appropriate United States District Court" "Within 90 days of receipt of the final decision"** as the final decisions were being rendered by the agency and the EEOC on Petitioner's Equal Employment Opportunity complaints subsequent to the filing date of the initial pleading in PJM-96-2913, Petitioner filed four additional civil actions, PJM-97-379, PJM-97-3359, PJM-97-3483, and PJM-97-3495.

After Petitioner's petition for rehearing was denied on August 10, 1998 by the USCAFC, Petitioner attempted, with a **verified pleading**, to **"amend the party's pleading once as a matter of course at any time before a responsive pleading is served"** on August 19, 1998 in PJM-96-2913, with the facts and transactions and claims and issues of Petitioner's timely filed four additional civil actions, but without a "motion for leave to file an amended complaint", for the district court in PJM-96-2913 on June 30, 1997 had ordered "the parties to file no further motions".

On September 01, 1998 in PJM-96-2913, Defendants through the Department of Justice violated the order to file no further motions by actually filing a motion, a "Motion for Enlargement of Time to Respond to [Petitioner's **verified] Amended Complaint**" which was filed by Petitioner on August 19, 1998 "through and including September 30, 1998". (See Appendix F.)

On September 02, 1998 in PJM-96-2913, the district court mailed Petitioner's August 19, 1998 filed **verified "Amended Complaint"** back to him with the specific directions and instructions that a "Motion for Leave to File an Amended Complaint" was required. (See Appendix G.)

On September 08, 1998 in PJM-96-2913, Petitioner filed a "Motion for Leave to File an Amended Complaint" with the same **verified "Amended Complaint"** that Petitioner had filed on August 19, 1998 without a "Motion for Leave to File an Amended Complaint", according to the specific directions and instructions of the district court which stated that a "Motion for Leave to File an Amended Complaint" was required, and containing the facts and transactions and claims and issues of Petitioner's timely filed four additional civil actions. (See Exhibit H.)

On September 09, 1998 the district court mailed to Petitioner a copy of a sua sponte order dated August 31, 1998, without any **"notice or opportunity to be heard before the**

sua sponte application of claim preclusion", and without any, much less a **"full and fair, opportunity to litigate the claims in any proceeding"**, dismissing the timely filed (according to 42 U.S.C. § 2000e-16 {See Appendix D.} and 29 C.F.R. § 1614 {See Appendix D.} civil actions PJM-97-379, PJM-97-3359, and PJM-97-3495 as supposedly being "duplicative of claims", in PJM-96-2913 and PJM-97-3483, (See Appendix I.), although there had not been any **"final judgment on the merits"** anywhere, and although either by the **"same transaction test"** or the **"same factual allegations test"** the different civil actions did not meet the requirement for claim preclusion that **"the prior action must have involved the same claim"**, especially since according 29 C.F.R. § 1614 for each transaction or factual allegation or **"matter alleged to be discriminatory"**, to use the controlling words of 29 C.F.R. § 1614, "an aggrieved person must initiate" a different, separate, and distinct Equal Employment Opportunity (EEO) complaint **"within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action"**, and thus in effect each different, separate, and distinct EEO complaint within 45 days of the date of the matter alleged to be discriminatory is a different, separate, and distinct transaction

and a different, separate, and distinct factual allegation for purposes of claim analysis, with the five civil actions reciting **"a continuing series of wrongful acts permitting a series of actions"** and **"with each such action considered to be a separate claim unrestricted by the limitation of the claim preclusion doctrine"**, and with Petitioner following the specific directions and instructions of the Defendants themselves and the Equal Employment Opportunity Commission to file another federal court civil action within 90 days of their final agency and EEOC decisions as per 42 U.S.C. § 2000e-16 and 29 C.F.R. § 1614 (See Appendix D.)

On September 18, 1998 in PJM-96-2913, the district court granted Defendants' "Motion for Enlargement of Time to Respond to [Petitioner's **verified] Amended Complaint**" "through and including September 30, 1998". (See Exhibit J.)

On September 17, 1998 in PJM-97-3483, (note that this is not in PJM-96-2913), the district court returned Petitioner's "Motion for Leave to file the Amended Complaint" and the **verified "Amended Complaint"** in PJM-97-3483 with the notation "Pursuant to the verbage (sic) in attached Memorandum Opinion and Order (signed by Judge Peter J. Messitte, dated September 8, 1998) [but not even filed according to the docket sheet by the Clerk of the Court until September 15, 1998] no further pleadings are to be filed". (See Appendix K.)

On October 08, 1998, since Defendants had not filed anything in PJM-96-2913 since their September 01, 1998 "Motion for Enlargement of Time to Respond to [Petitioner's **verified] Amended Complaint**" "through and including September 30, 1998" (See Appendix F.), which motion was granted by the district court on September 18, 1998 (See Appendix J.), Petitioner filed "Plaintiff's Motion for Judgment by Default According to Federal Rules of Civil Procedure Rule 55", as Petitioner had previously done in the dismissed civil actions PJM-97-379, PJM-97-3359, and PJM-97-3495 (which may be the real reason they were dismissed, for they were not really "duplicative of claims", but rather that **PJM-97-379, PJM-97-3359, and PJM-973495 were "duplicative of plaintiff's motions for judgment by default against defendants"**. (See Appendix L.)

On October 13, 1998 in PJM-96-2913 the district court, without any consideration at all, ("The Court will not consider this motion") dismissed Petitioner's "Motion for Leave to File an Amended Complaint" with the same **verified "Amended Complaint"** that Petitioner had filed on August 19, 1998 without a "Motion for Leave to File an Amended Complaint", according to the specific directions and instructions of the district court which stated that a "Motion for Leave to File an Amended Complaint" was required, and containing the facts and transactions and

claims and issues of Petitioner's timely filed four additional civil actions, which was docketed paper numbered 75, stating that "The Court will not consider these motions, docketed papers 70, 71, 72, 74, 75, and 86" and that "The Clerk of the Court will be directed to not docket any more pleadings". (See Appendix A.)

The preceding scenario merely proves why Petitioner did not, and in fact under threat of sanctions from the district court could not, merely amend his first federal court civil action PJM-96-2913 to meet the deadlines imposed by 42 U.S.C. 2000e-16 (Title VII) and 29 C.F.R. § 1614 "to file a civil action in an appropriate United States District Court" "Within 90 days of receipt of the final decision" as the final decisions were being rendered on Petitioner's Equal Employment Opportunity complaints subsequent to the filing date of the initial pleading in PJM-96-2913, and why Petitioner filed five federal court civil suits instead. Since these five federal civil suits were "actions involving a common question of law or fact pending before the court", Petitioner filed motions for consolidation according to FRCP Rule 42 in all five of his federal court civil actions, (which motion for consolidation filed on September 08, 1998 became docketed paper numbered 74 in PJM-96-2913). (See Appendix A regarding the dismissal of the motion for consolidation, without any consideration at

all by the district court, {"The Court will not consider this motion"}, which motion for consolidation was docketed paper numbered 74 in PJM-96-2913).

There are many individual elements of the United States federal government's and the National Institutes of Health's so called affirmative action or diversity programs for minorities and females and hispanics. (See Appendix M for a brief summary some of the ones of which Petitioner is aware, without the benefit of the investigations which should have been done by the agency according to 29 C.F.R. § 1614 on fifty of Petitioner's timely filed EEO complaints, {See Appendix D.}, and without the benefit of any discovery at all in federal court.)

Petitioner filed a motion for a preliminary injunction or for a permanent injunction, or in the alternative for declaratory judgment, or in the alternative for partial summary judgment, on the finding and conclusion that a) no compelling governmental interest exists which constitutionally protects or permits continuation of the federal government's affirmative action programs or diversity programs or the Federal Equal Opportunity Recruitment Program (FEORP) or the Affirmative Employment Program (AEP) and b) that the means employed by the federal government's affirmative action programs or diversity programs or the Federal Equal Opportunity

Recruitment Program (FEORP) or the Affirmative Employment Program (AEP) are not narrowly tailored measures according to *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097 at 2144, 132 L.Ed.2d 158, 63 USLW 4523, (U.S.Colo., Jun 12, 1995) (which is paper numbered 86 in PJM-96-2913). (See Appendix A regarding the dismissal, without any consideration at all by the district court, {"The Court will not consider this motion"}, of the motion for a preliminary or a permanent injunction, which was docketed paper numbered 86 in PJM-96-2913). The district court never addressed any of the required factors in granting or refusing preliminary injunctions or permanent injunctions, such as the *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 195-196 (4th Cir. 1977) factors required in the Fourth Circuit, and violated Federal Rules of Civil Procedure Rule 52(a) which specifically states that "in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action".

Since a review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance was initially stated as "Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and §1343. Authority for this Complaint is provided in the Fourteenth Amendment Equal

Protection Clause of the United States Constitution, by the Fifth Amendment Due Process Clause of the United States Constitution, by 42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964, and under 29 U.S.C. §621, et seq."

REASONS FOR ALLOWANCE OF THE WRIT

PLEADINGS, MOTIONS, AFFIDAVITS, APPEALS AUTHORIZED BY THE FRCP

"Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, see *In re Martin-Trigona*, 737 F.2d 1254, 1261-1262 (2d Cir. 1984), or a failure to comply with sanctions imposed for such conduct, *Johl v. Johl*, 788 F.2d 75 (2d Cir. 1986) (per curium), a court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson Greenshields Securities Inc. v. Lau*, 825 F.2d 647, at 652 (2d Cir. 1987).

A quick check in Westlaw will confirm that the above quotation from the Second Circuit Court of Appeals has been quoted and cited in over 200 cases, such as *MacDraw, Inc. v. CIT Group Equipment Financing, Inc.*, 73 F.3d 1253, 1256 (2nd Cir.(N.Y.) 1996); *Milltex Industries Corp. v. Jacquard Lace Co., Ltd.*, 55 F.3d 34, at 39 (2nd Cir.(N.Y.) 1995);

Schoenberg v. Shaposlky Publishers, Inc., 971 F.2d 926, 936 (2nd Cir.(N.Y.) 1992); and *Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 102, §7.3.

As an example, the first of over 200 citations in Westlaw regarding the above quote is from the United States Court of Appeals for the Federal Circuit decision in *In re Halliburton Co.*, 991 F.2d 810, 1993 WL 118929, (Fed.Cir.(Tex.), March 12, 1993). (See Appendix E.)

FRCP RULE 15 AMENDMENTS

Plaintiff tried to "amend the party's pleading once as a matter of course at any time before a responsive pleading is served" as per FRCP Rule 15 (a) Amendments with a verified pleading.

"The rule allows for liberal amendments in the interests of resolving cases on the merits." 3 Moore's Federal Practice, § 15.02 [1] (Matthew Bender 3d ed.).

"A party is allowed to amend a pleading once "as a matter of course" or without leave of court", 3 Moore's Federal Practice, § 15.10 (Matthew Bender 3d ed.). **The district court erred in refusing to allow an amended complaint to add a First amendment claim because defendants never filed a responsive pleading and only filed a motion to dismiss**

for failure to state a claim, *Caine v. Hardy*, 905 F.2d 858, 863 (5th Cir. 1990). **Since defendants had not filed a responsive pleading, plaintiff had a right to amend on remand**, *Schiffels v. Kemper Fin. Serv., Inc.*, 978 F.2d 344, 353-354 (7th Cir. 1992). **The court improperly denied leave when plaintiff was under no obligation to ask for leave because defendant had not filed responsive pleading**, *Stewart v. RCA Corp.*, 790 F.2d 624, 631 (7th Cir. 1986). **Order denying amendment was improper when plaintiff may amend once without leave, and it is irrelevant that leave was not requested**, *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995). **Plaintiff was allowed to amend once without leave, since only filing by defendant was motion to dismiss and to compel arbitration, which was not responsive pleading**, *Driscoll v. Smith Barney, Harris, Upham & Co.*, 815 F.2d 655, 659-660 (11th Cir. 1987).

"A party may amend a pleading as a matter of course at any time before a responsive pleading is filed. ... the filing of a Rule 12(b) defense extends the time for filing an answer". 3 Moore's Federal Practice, § 15.11 (Matthew Bender 3d ed.). **If the time for serving a responsive pleading is extended, then the right to amend is extended**, *Prudential Sec. Ltd. Partnership Litig.*, 158 F.R.D. 562, 567-568 (S.D.N.Y. 1994). **Motion**

to dismiss is not a responsive pleading so the right to amend was not cut off and the district court was obligated to review the amended complaint, *Hill v. City of Indianapolis*, 17 F.3d 1016, 1018 (7th Cir. 1994). The right to amend is terminated only by a responsive pleading, *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1530 (9th Cir. 1995), *Mayes v. Leipsiger*, 729 F.2d 605, 607 (9th Cir. 1984). The right to amend was not cut off because no responsive pleading was filed, *Fox v. Sierra Dev. Co.*, 876 F.Supp. 1169, 1170-1171 (D. Nev. 1995). The court improperly denied leave because the plaintiff had a right to amend the complaint since no responsive pleading had been filed, *Fortner v. Thomas*, 983 F.2d 1024, 1032 (11th Cir. 1993).

"The term responsive pleading is defined by reference to Rule 7(a), which distinguishes between pleadings and motions, and provides an exclusive list of what is a pleading: a complaint, an answer, a reply to a counterclaim, an answer to a cross claim, a third party complaint, and an answer. Pre-trial motions attacking the pleadings or seeking relief as to collateral matters are not responsive pleadings. Accordingly if no responsive pleading has been filed, the filing of these motions does not cut off a plaintiff's right to amend as a matter of course. Examples of pre-trial motions

include: motions to dismiss, motions for summary judgment, motions for a more definitive statement under Rule 12, motions for production and inspection, and motions to quash service." 3 Moore's Federal Practice, § 15.11 (Matthew Bender 3d ed.). The court allowed the amendment and specified the types of pre-trial motions that did not constitute responsive pleadings, *Kroger Co. v. Adkins Transfer Co.*, 284 F.Supp. 371, 374 (D.C. Tenn. 1968). A motion to dismiss and compel arbitration was not a responsive pleading, *Driscoll v. Smith Barney, Harris, Upham & Co.*, 815 F.2d 655, 659 (11th Cir. 1987). A motion to dismiss is not a responsive pleading and order dismissing complaint does not cut off the right to amend, *Camp v. Gregory*, 67 F.3d 1286, 1289 (7th Cir. 1995). At the time of dismissal, defendant had not yet filed a responsive pleading, so plaintiff had a right to amend once as a matter of course, *Schiffels v. Kemper Fin. Serv., Inc.*, 978 F.2d 344, 353-354 (7th Cir. 1992). A motion to dismiss is not a responsive pleading, *Miles v. Dep't of Army*, 881 F.2d 777, 781 (9th Cir. 1989). When defendants only filed a motion to dismiss, plaintiff was entitled to amend as of right because it is well established in circuit that motion is not responsive pleading, *Fortner v. Thomas*, 983 F.2d 1024, 1032 (11th Cir. 1993). Neither motions for summary judgment nor dismissal are responsive pleadings, *Zaidi v.*

Ehrlich, 732 F.2d 1218, 1220 (5th Cir. 1984). **Court should have granted proposed amendment because no responsive pleading was filed**, *Ross v. Franzen*, 777 F.2d 1216, 1222 (7th Cir. 1985)."

"**One amendment is permitted of course before a responsive pleading is filed.** *Coral v. Gonse*, 330 F.2d 997 (4th Cir. 1964); *Wallace v. Chrysler Credit Corp.*, 743 F.Supp. 1228 (W.D. Va. 1990)." "**Motions to dismiss and for summary judgment are not considered responsive pleadings for purposes of subdivision (a) of this rule.** *Williams v. Wilkerson*, 90 F.R.D. 168 (E.D. Va. 1981)." "**Motions to dismiss and motions for summary judgment are not treated as responsive pleadings under this rule.** *United States ex rel. Tucker v. Thomas Howell Kiewit (USA) Inc.*, 149 F.R.D. 125 (E.D. Va. 1993)." "**Where defendants did not file an answer to plaintiff's original complaint, but rather filed motions to dismiss, such pre-answer Rule 12(b) motions not being responsive pleadings, plaintiff was not required to obtain leave of court before filing his amended complaint.** *Sohns v. Dahl*, 392 F.Supp. 1208 (W.D. Va. 1975)."

A liberal, pro-amendment ethos dominates the intent and judicial construction of Rule 15(a)." 3 Moore's Federal Practice, § 15.14 [1] (Matthew Bender 3d ed.).

"The text of Rule 15(a) is unequivocal regarding the requirement that leave to amend be liberally granted. The policy that a court should freely grant amendments limits a court's ability to deny leave to amend, and in a proper case, may warrant a finding of abuse of discretion in denying leave. During the pretrial phase, a court should allow amendments to ensure that all the issues are before the court." 3 Moore's Federal Practice, § 15.14 [1] (Matthew Bender 3d ed.). The court's discretion to deny leave is limited by the procedural rule promoting amendment, *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991).

"Under *Foman v. Davis* it is an abuse of discretion if the district court refuses to grant leave to amend without giving any reason." 3 Moore's Federal Practice, § 15.14 [1] (Matthew Bender 3d ed.). Courts should freely grant leave to amend, *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed. 2d 222 (1962). **If court lacks substantial reason to deny leave, discretion is not broad enough to permit denial**, *Louisiana v. Litton Mortgage Co.*, 50 F.3d 1298, 1303 (5th Cir. 1995).

"The leading case regarding the trial court's exercise of discretion to deny amendment is *Foman v. Davis*. In *Foman*, the Supreme Court asserted that "outright refusal to grant the leave without any justifying

reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." After the *Foman* decision, it is clear that a trial court must provide a reason for denying a motion to amend. The *Foman* decision also clarified the factors that a district judge may use to deny leave to amend. These factors include: undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of the amendment." 3 Moore's Federal Practice, § 15.15 [1] (Matthew Bender 3d ed.).

Defendants have not even bothered bringing up any of these factors, probably because they simply do not exist.

Court erred in denying leave to amend complaint because it did not constitute a short and plain statement as required by Rule 8, *Salahuddin v. Cuomo*, 861 F.2d 40, 42-43 (2d Cir. 1988). **Court should freely grant leave to amend, especially with pro se plaintiff**, *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 103 (5th Cir. 1995).

Allegations of pro se litigants are held to a less stringent standard than pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). **Court should provide opportunity to amend before dismissal for pro se plaintiff to**

develop case sufficiently to bring to light any merits of case, *Parker v. Fort Worth Police Dep't.*, 980 F.2d 1023, 1026 (5th Cir. 1993). **Before court may dismiss pro se litigant for failure to state claim, it must provide notice of deficiencies and opportunity to amend before dismissal**, *McGluckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992). 3 Moore's Federal Practice, § 15.15 [3] (Matthew Bender 3d ed.).

"**This rule provides liberal practice in allowance of amendments to formal pleadings.** *Coral v. Gonse*, 330 F.2d 997 (4th Cir. 1964). **In federal practice leave to amend is to be granted with liberality.** *Austin v. Reynolds Metals Co.*, 327 F.Supp. 1145 (E.D. Va. 1971)." "**Motion to dismiss held in abeyance so plaintiff could tender amended complaint.** *Miller v. Holiday Inns, Inc.*, 436 F.Supp. 460 (E.D. Va. 1977)."

"The movant's ability to obtain summary judgment will, however, vary according to the pleadings. ... The claims and defenses at issue also determine what constitutes relevant evidence supporting or opposing summary judgment." 11 Moore's Federal Practice, § 56.30 [8] [a] [i] (Matthew Bender 3d ed. 1997) under section entitled "[a] **Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of**

Civil Procedure May Influence Summary Judgment Decisions [i] Pleadings Frame Dispute and Consequently Affect Materiality".

"Because the volume and nature of claims pleaded can affect summary judgment, a party seeking to avoid summary judgment may profit from amending its complaint to allege additional or different matter." 11 Moore's Federal Practice, § 56.30 [8] [a] [iii] (Matthew Bender 3d ed. 1997) under section entitled [iii] **Motions to Amend Pleadings May Narrow or Broaden Factual and Legal Questions and Can Therefore Affect Summary Judgment**". Petitioner's original unverified pleading in PJM-96-2913 only recited the facts of a half a dozen of petitioner's individual equal employment opportunity complaints. Petitioner's proposed **amended verified pleading** in PJM-96-2913 recites the facts of about four dozen of petitioner's individual equal employment opportunity complaints, and contains additional claims, including rather reluctantly a claim for a be fired or quit constructive discharge.

Verified pleadings "may properly be considered as equivalent to a supporting or opposing affidavit, as the case may be. *Sheinkopf v. Stone*, 927 F.2d 1259 (1st Cir. 1991) (**verified complaint treated as equivalent of an affidavit on a motion for summary judgment**) See also *Lodge Hall Music, Inc., v. Waco Wrangler Club, Inc.*, 831 F.2d 77

(5th Cir. 1987)." Moore's Federal Practice, Federal Civil Rules 1997, by James Moore, published by Matthew Bender & Company, New York, page 617, §56.3 [6] Piercing the Pleadings; Effect of Verified and Unverified Pleadings.

FRCP RULE 42 CONSOLIDATION

"The pendency of an earlier action in the same federal district court was not a ground for dismissal of a subsequently instituted action that was alleged to be based on a cause of action identical to that in the pending action against the same defendants, and the proper solution would be to consolidate those actions. *Thomas v. Deason*, D.C.Ky. 1970, 317 F.Supp. 1098, 1099." 9 *Wright & Miller, Federal Practice and Procedure*: Civil 2d § 2383 (1995), footnote 1 case.

"Although the public employee's initial employment discrimination action under Section 2000 e et seq. of Title 42 and his subsequent action alleging removal from employment for constitutionally impermissible reasons arose out of the same set of facts and sought basically the same relief, the district court erred in dismissing the second action on the ground that the earlier suit arose from the same set of facts. The proper solution would have been to consolidate the two separate actions in the interests of equity and

judicial economy. *Miller v. U.S. Postal Serv.*, C.A.5th, 1984, 729 F.2d 1033." 9 *Wright & Miller, Federal Practice and Procedure:* Civil 2d § 2383 (1995), text plus footnote 1 case.

"A common factual issue, such as two lawsuits pending in the same court and brought by the same plaintiff, is a sufficient basis for consolidation if combining the two cases will simplify the litigation process. Especially if the alternative (to dismiss the second lawsuit and require the plaintiff to amend its first complaint to add the dismissed allegations) would be a complicated exercise of form over substance, consolidation is generally preferred. *Hanes Cos. v. Ronson*, 712 F. Supp. 1223, 1230 (M.D.N.C. 1988) (court found consolidation of two cases filed by same plaintiff "enhanced efficiency and economy for all concerned")." 8 *Moore's Federal Practice*, § 42.10 [1] [c] [iv] (Matthew Bender 3d ed. 1997) under section entitled "Multiple Filings by One Plaintiff May be Consolidated".

The district court, contrary to the clear holding of cases such as the above, (as well as *Katz v. Realty Equities Corp. of N. Y.*, 521 F.2d 1354, 1356 (2d Cir. 1975); *Miller v. United States Postal Service*, 729 F.2d 1033, 1036-1037 (5th Cir. 1984); *Capps v. Eggers*, 782 F.2d 1341, 1342 (5th Cir. 1986); *Masterson v. Atherton*, D.C.Conn. 1963, 223 F.Supp. 407, affirmed C.A.2d, 1964, 328 F.2d 106; *Johnson*

v. Mississippi Valley Barge Line Co., D.C.Pa. 1963, 34 F.R.D. 140; *Weitort v. A. H. Bull & Co.*, D.C.Pa. 1961, 192 F.Supp. 165; *Midwest Community Council, Inc. v. Chicago Park Dist.*, D.C.Ill. 1983, 98 F.R.D. 491; etc.), dismissed the second lawsuit (and the third lawsuit and the fifth lawsuit, See Appendix I, for although they were supposedly not **"actions involving a common question of law or fact pending before the court"**, they were supposedly nevertheless "duplicative of claims", whatever this new, sham, bogus, phony, spurious, counterfeit "claim preclusion" theory means (?)), and rather than "require the plaintiff to amend its first complaint to add the dismissed allegations", the district "denied plaintiff even the opportunity to amend the first complaint to add the dismissed allegations", even though Defendants had not submitted a "responsive pleading", (in fact Defendants never did submit a "responsive pleading"), and Petitioner had a right to amend the pleading **"once as a matter of course at any time before a responsive pleading is served"** as per Federal Rules of Civil Procedure Rule 15 (a) Amendments. (See Appendix G for the fate of Petitioner's attempt to **"amend the party's pleading once as a matter of course at any time before a responsive pleading is served"**, with a **verified pleading**, but without a "motion for leave to file an amended complaint", for the district court in PJM-96-

2913 on June 30, 1997 had ordered "the parties to file no further motions", as recited in Appendix A.) (See Appendix H, which is docketed paper numbered 75 in PJM-96-2913, for a copy of the filing of a "motion for leave to file an amended complaint" and the **verified "Amended Complaint"** as required by the district court in Appendix G.) (See Appendix A regarding the fate of Appendix H, which is docketed paper numbered 75 in PJM-96-2913, namely the filing of a "motion for leave to file an amended complaint" and the **verified "Amended Complaint"** as required by the district court in Appendix G.) (See Appendix K for the fate of the "Motion for Leave to file an Amended Complaint" and the **verified "Amended Complaint"** in PJM-97-3483.)

FRCP RULE 65 INJUNCTIONS

We note that, contrary to respondent's suggestion, see Brief for Respondents 29-30, Adarand need not demonstrate that it has been, or will be, the low bidder on a government contract. The injury in cases of this kind is that a "discriminatory classification prevents the plaintiff from competing on an equal footing." *General Contractors v. Jacksonville*, 508 U.S. 655, ---, 113 S.Ct. 2297, 2304, 124 L.Ed.2d 586 (1993). The aggrieved party "need not allege that he would have obtained the benefit but for the barrier in order to

establish standing." *Id.*, at ---, 113 S.Ct., at 2303. (*Adarand Constructors, Inc. v. Pena*, 115 S.Ct. at 2104-2106.)

Taken together, these three propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest scrutiny." (*Adarand Constructors, Inc. v. Pena*, 115 S.Ct. at 2110-2112.)

Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests."(*Adarand Constructors, Inc. v. Pena*, 115 S.Ct. at 2112-2114.)

"Where constitutional rights have been infringed upon, the threat of irreparable injury and disservice to the public interest is clear. *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160 (5th Cir. 1993)" Moore's Federal Practice, Federal Civil Rules 1997, by James Moore, published by Matthew Bender & Company, New York, page 696, §65.3.

"District court abused its discretion in

denying motion for preliminary injunction without evidentiary hearing because, in Title VII (42 U.S.C. §§ 2000e-2000e-17) actions, irreparable harm is presumed and hearing would have determined whether defendant could have overcome presumption and whether plaintiff had met other requirements for injunction. *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169-170 (11th Cir. 1988). 13 *Moore's Federal Practice*, § 65.21 [1] (Matthew Bender 3d ed.).

"The standard for preliminary injunctions is established in this Circuit by *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977)." *Rum Creek Coal Sales v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991).

CONCLUSION

Petitioner has been in effect precluded from any meaningful action in the court proceedings or any meaningful "access to the court system", *Moy v. United States*, 906 F. 2d 467, 470 (9th Cir. 1990). **Petitioner has in effect had his "constitutional right of access to the courts"**, (*Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 1994, 52 L.Ed. 2d 72 (1977)) **and "his right to adequate, effective, and meaningful access"**, (*Bounds*, 430 at 822, 97 S.Ct. at 1495) **to the courts curtailed and abridged. "It sanctions access restrictions that standing alone might or might not be objectionable but which "taken together [are]**

so burdensome as to deny the litigant meaningful access to the courts", *In re Green*, 669 F. 2d 779, at 786, (D.C.Cir. 1981) (per curiam); *Abdullah v. Gatto*, 773 F.2d 487, at 488 (2d Cir. 1985) (per curiam)", *Procup v. Strickland*, 792 F.2d 1069, at 1078 (11th Cir. 1986) (en banc, per curiam).

Wherefore, Petitioner hereby respectfully makes an application to the Court for an order granting Petitioner's petition for a writ of mandamus, and Petitioner hereby respectfully makes an application to the court for an order that the United States District Court for the Southern District of Maryland's orders dated August 19 and mailed on September 02, 1998 (See Appendix G), dated August 31, 1998 and mailed September 09, 1998 (See Appendix I), dated September 15, 1998 (See Appendix K) as a result of the orders dated September 08, 1998, and dated October 13, 1998 (See Appendix A), be reversed or vacated and remanded.

Petitioner hereby respectfully makes an application to the Court for an order that the district court be directed to allow the filing and docketing and to consider all pleadings, motions, affidavits, and appeals authorized by the Federal Rules of Civil Procedure and Title VII, including **"amend[ing] the party's pleading once as a matter of course at any time before a responsive pleading is served"**, and motions to **"amend the party's pleading by leave of court ... which shall be freely given**

consolidation in **"actions involving a common question of law or fact pending before the court"**, and motions for a preliminary or a permanent injunction on the racial and gender and national origin classifications of the United States federal government's so called affirmative action and diversity programs.

Petitioner hereby respectfully makes an application to the Court for an order with instructions to the district court to consolidate appellant's civil actions PJM-96-2913, PJM-97-379, PJM-97-3359, PJM-97-3495, and PJM-98-4133.

Petitioner hereby respectfully makes an application to the Court for an order that the district court apply strict scrutiny to the racial and gender and national origin classifications of the United States federal government's affirmative action and diversity programs for minorities and females and hispanics and determine whether they are narrowly tailored measures that further compelling governmental interests, as per *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097, 132 L.Ed.2d 158, 63 USLW 4523.

Respectfully Submitted,

Frank Paul Lukacs

Frank Paul Lukacs, J.D., M.B.A.
P. O. Box 3143
McLean, Virginia 22103-3143
Telephone # (703) 481-0825

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770

MEMORANDUM

TO: Frank Paul Lukacs

FROM: Judge Peter J. Messitte

RE: Lukacs v. Shalala

Civil No. PJM-96-2913

Date: October 13, 1998

The Court notes that Plaintiff has recently filed several pleadings, despite the Court's Order of June 30, 1997 directing the parties to file no further motions until the Court rules on Defendant's pending Motion to Dismiss or in the Alternative for Summary Judgment. The Court will not consider these motions, docketed Papers 70, 71, 72, 74, 75, and 86. These pleadings are all deemed DENIED without prejudice.

Any attempt of Plaintiff to file further pleadings until the Court's ruling on said Motion to Dismiss or in the Alternative for Summary Judgment will be made at the risk of sanctions.

The Clerk of this Court will be directed to not docket any more pleadings by Plaintiff until the Court's ruling on said motion.

Despite the informal nature of this ruling, it shall constitute an Order of Court, and the Clerk is directed to docket it accordingly.

Signature of Peter J. Messitte

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-2537

In Re: FRANK PAUL LUKACS,
Petitioner.

On Petition for Writ of Mandamus.
(CA-96-2913-PJM)

Submitted: November 17, 1998
Decided: November 30, 1998

Before WIDENER and MICHAEL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Frank Paul Lukacs, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Frank Paul Lukacs filed a petition for a writ of mandamus requesting that this court order the district court: (1) vacate its orders in two of Lukacs' pending civil cases prohibiting the parties from filing further pleadings or motions until the court is able to dispose of motions currently pending; and (2) permit Lukacs to file pleadings, motions, affidavits, and appeals. In this mandamus petition, Lukacs failed to establish that he has a clear right to the relief sought and that no other remedy is adequate. See In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus may not be used as a substitute for appeal. See In re United States Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). We therefore grant Lukacs' motion to file an attachment to his petition and deny Lukacs's petition for a writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed February 10, 1998
No. 98-2537
CA-96-2913-PJM

In Re: FRANK PAUL LUKACS,
Petitioner.

On Petition for Rehearing
and Rehearing In Banc

Petitioner's petition for rehearing and rehearing en banc were submitted to this Court. As no member of this Court or the panel requested a poll on the rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc are denied.

For the Court,

/s/ Patricia S. Connor

CLERK

APPENDIX D

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

Fourteenth Amendment Equal Protection Clause of the United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fifth Amendment Due Process Clause of the United States Constitution

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for

the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964

42 U.S.C. §2000e-16 states that "All personnel actions affecting employees or applicants for employment ... shall be made free from any discrimination based on race, color, religion, sex, or national origin."

42 U.S.C. §2000e-16 states that "Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, ... an employee or applicant for employment ... may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant."

5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d)

5 U.S.C. §7201 (a) states that "For the purpose of this section - (1) "underrepresentation" means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13".

5 U.S.C. §7201 (c) states that "the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable - (1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service,

with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and (2) that the Office conduct a continuing program of (A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and (B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation."

5 U.S.C. §7201 (d) states that "the Equal Employment Opportunity Commission shall - (1) establish the guidelines proposed in carrying out the program required under subsection (c) of this section: and (2) make determinations of underrepresentation which are proposed to be used initially under such program; and (3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection."

5 C.F.R. §720.202 (a), 5 C.F.R. §720.202 (e), 5 C.F.R. §720.205 (c)

5 C.F.R. §720.202 (a) states that "Underrepresentation means a situation in which the number of women or members of a minority group within a category of civil service employment constitutes a lower

percentage of the total number of employees within the employment category than the percentage of women or the minority constitutes within the civilian labor force of the United States, in accordance with section 720.205 (c) and (d)."

5 C.F.R. §720.202 (e) states that "Recruitment means the total process by which the Federal Government and the Federal agencies locate, identify, and assist in the employment of qualified applicants from underrepresented groups for job openings in categories of employment where underrepresentation has been determined. It includes both innovative internal and external recruitment actions. It is also intended to cover processes designed to prepare qualifiable applicants (those who have the potential but do not presently meet valid qualification requirements) for such job openings through programs of training, work experience, or both."

5 CFR §720.205 (c) states that "Where an agency or agency component located in a geographical area where the percentage of underrepresented groups in the area civilian labor force is higher than their percentage in the national labor force, the agency or component must base its plans on the higher level of representation in the relevant civilian labor force."

29 C.F.R. § 1614.408 Civil action: Title VII, Age Discrimination in Employment Act, and Rehabilitation Act

29 C.F.R. § regarding the rights of federal government employees or applicants for filing civil actions for redress of grievances specifically states that "A complainant who has filed an individual complaint ... is authorized under Title VII, the ADEA, and the Rehabilitation Act to file a civil action in an appropriate United States District Court

Within 90 days of receipt of a final decision on an individual or class complaint if no appeal has been filed or

Within 90 days of receipt of the Commission's final decision on an appeal".

Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM)

OPM Attachment 1 to FPM Letter 720-2 defines minorities as "intended to include only the following racial and ethnic categories: American Indian or Alaskan Indian, Asian or Pacific Islander, Black (not of hispanic origin), and Hispanic", in effect all descendants of peoples originating in the continents of North America, Asia, Africa, and South America, except of course descendants of peoples originating in the continent of Europe.

OPM Attachment 1 to FPM Letter 720-2 defines the basic racial and ethnic categories as follows: "(a) American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. (b) Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes for example, China, Japan, Korea, the Philippine Islands, and Samoa. (c) Black. A person having origins in any of the black racial groups of Africa. (d) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race."

OPM Attachment 1 to FPM Letter 720-2 further defines Hispanic origin by geographic regions of the United States such that "in the five Southwestern States (Arizona, California, Colorado, New Mexico, and Texas), the Hispanic population is identified as Spanish language or surname; in the Middle Atlantic States (New York, Jew Jersey, and Pennsylvania) as the population of Spanish language; and in the remaining 42 States and the District of Columbia, as the population of Spanish language".

OPM Attachment 1 to FPM Letter 720-2 states that "An underrepresentation determination is a comparison between (a) the percentage of a particular minority/sex in a category of Federal employment and (b) the percentage of that same group in the civilian labor force either nationally or locally." Furthermore, "agencies need to compare both national and local", (State or standard metropolitan statistical area ("SMSA)), "civilian labor force data for each minority/sex group, and under OPM's regulations, must generally use the higher of the two percentages in making each underrepresentation determination".

OPM Attachment 1 to FPM Letter 720-2 states that "It is important to recognize that determinations of underrepresentation made in support of FEORP are based on civilian labor data without regard to the availability of minorities and women in the labor force identified as having (or potentially having) the skills needed to perform in various occupations and pay grades".

Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA)

DHHS COTA states that "Selection Method: Through the use of the Department of Health and Human Services Training Agreement for Career Opportunities, employees who do not

meet the basic qualification requirements, as stated in the X-118 Qualification Standards, will be given the opportunity to be competitively selected for the above position."

29 C.F.R. 1614.108 Investigation of Complaints

(a) The investigation of complaints shall be conducted by the agency against which the complaint has been filed.

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. Agencies may use an exchange of letters or memoranda, interrogatories, investigations, fact finding conferences or any other fact finding methods that efficiently and thoroughly address the matters at issue. Agencies are encouraged to incorporate alternative dispute resolution techniques into their investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c) (1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the agency, and any employee of the Federal agency shall produce such documentary and testimonial

evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation, or alternatively by written statement under penalty of perjury.

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decision maker should, or the Commission on appeal may, in appropriate circumstances:

(i) draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances. The Commission may, upon request, supply the agency with the name of an investigator with appropriate security clearances.

(e) The agency shall complete its investigations within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to § 1614.107. By written agreement within those time periods, the complainant and the respondent agency may voluntarily extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Exec. Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the investigating agency notifies the parties of the extension.

(f), Within 180 days from the filing of the complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the

investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing before an administrative judge or may receive an immediate final decision pursuant to section 1614.110 from the agency with which the complaint was filed. In the absence of the required notice, the complainant may request a hearing at any time after 180 days has elapsed from the filing of the complaint.

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964

42 U.S.C. § 2000e-2. Unlawful Employment Practices provides

"(a) it shall be an unlawful employment practice for an employer -- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

APPENDIX E

In re HALLIBURTON COMPANY, Petitioner.
Misc. No. 371.
United States Court of Appeals, Federal Circuit.
March 12, 1993.
S.D. Tex.
VACATED.

Before ARCHER, Circuit Judge, BENNETT, Senior Circuit Judge, and MICHEL, Circuit Judge.
ON PETITION FOR WRIT OF MANDAMUS.

MICHEL, Circuit Judge.
ORDER
1 Halliburton Company petitions for a writ of mandamus directing the United States District Court for the Southern District of Texas to vacate its March 4, 1993 order. Louis J. Wardlaw, III and Joe A. Young oppose.

This matter stems from Wardlaw and Young's patent infringement suit against Halliburton. Following a jury trial, the jury returned a verdict that Wardlaw and Young's patent was not invalid, and Halliburton infringed certain claims of the patent, and that the infringement was willful. The court awarded treble damages and attorney fees and judgment was entered on February 26, 1993.

Halliburton filed a Fed.R.Civ.P. 59(e) motion to alter or amend the judgment. Halliburton states that it intended to file

additional post judgment motions also. The time limit for any party to file any post judgment-motions is March 15, 1993. On March 4, 1993, the district court denied Halliburton's R. 59(e) motion and further ordered that:

"No party in this case file anything further before this Court. The Court will not grant, and is not interested in considering motions to amend judgment, motions for judgment notwithstanding the verdict, motions for a new trial, or any other sorts of motions. The Court is in complete agreement with the substance of the jury verdict, and has ruled regarding all remaining issues in the case. The cost issue has been resolved. This Court must now turn its attention to the some 550 other civil disputes, and more than 40 criminal cases, presently pending on one of the largest dockets in the Country. None of the foregoing filings are required for proper appellate scrutiny, and the filing of anything further in this Court, in the absence of the exhaustion of such appellate scrutiny, will constitute an act of contempt, for which appropriate sanctions will issue."

As Halliburton points out, the Federal Rules of Civil Procedure permit any party to file timely post-judgment motions. Further, this court has stated that the failure to file certain post-judgment motions will result in limited appellate review. *Biodex Corp. v. Loredan Biomedical, Inc.*, 946 F.2d 850, 862

(Fed.Cir. 1992)("Biodex's failure to present the district court with a post-verdict motion precluded appellate review of the sufficiency of the evidence.") Wardlaw and Young's argument that Halliburton filed a lengthy addendum to its proposed judgment does not negate Halliburton's right to file any post-judgment motions authorized by the rules.

Mandamus has traditionally been used to confine a trial court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Gulfstream Aerospace Corp. v. Mayacamas*, 485 U.S. 271, 289 (1988). For example, mandamus has been granted to compel a district court to accept the filing of a motion to extend the time to appeal, *Merritt v. Broglin*, 841 F.2d 184 (7th Cir. 1988), to compel a district court to consider a motion for leave to amend an answer to a complaint, *Richardson Greenshields Securities, Inc. v. Lau*, 825 F.2d 647 (2d Cir. 1987), and to vacate an order denying both sides right to employ preemptory challenges, *Maloney v. Plunkett*, 854 F.2d 152 (7th Cir. 1988).

2 In *Richardson*, the Second Circuit stated that absent extraordinary circumstances, "a [district] court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson*, 825 F.2d at 652. We are in agreement with this principle.

Accordingly,

IT IS ORDERED THAT:

Halliburton's petition is granted. The district court's order is vacated and the district court is directed to allow the filing of motions authorized by the Federal Rules of Civil Procedure.

C.A.Fed.(Tex.), 1993.

In re Halliburton Co.

END OF DOCUMENT

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Frank Paul Lukacs
Plaintiff

v.

Donna E. Shalala, et al
Defendants

September 1, 1998
Civil Action Number
PJM-96-2913

Motion for Enlargement of Time to Respond to Amended Complaint

Defendants, by and through their attorneys, Lynne A. Battaglia, United States Attorney for the District of Maryland, and Earle B. Wilson, Assistant United States Attorney, for said District, respectfully move for an enlargement of time to answer, move, or otherwise plead to plaintiff's amended complaint ...

At the same time that the Court denied plaintiff's motions, it directed that the parties file no further motions. ...

Plaintiff does not consent to this motion.

Wherefore, the United States prays for an order extending through and including September 30, 1998 for all of the defendants to answer, move, or otherwise plead to plaintiff's amended complaint.

Respectfully Submitted

Lynne A. Battaglia
United States Attorney

by: Signature of Earle B. Wilson

Earle B. Wilson #24414
Assistant U.S. Attorney
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21202-2692
(410) 209-4827

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770

Mailed September 02, 1998

Frank Paul Lukacs
P. O. Box 3143
McLean, Virginia 22103-3143

Re: Case No. PJM-96-2913

Dear Mr. Lukacs:

The Clerk received your "Amended Complaint" on 8/19/98; however, it is deficient in the areas checked below:

A "Motion for Leave to File an Amended Complaint" and proposed Summonses prepared in blank is required, (in duplicate).

The Clerk is directed to return the above paper(s) to counsel.

Very truly yours,
Signature of Peter J. Messitte, Jr.

_____

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Date Stamped:
Filed
US District Court
District of Maryland
September 08, 1998
Clerk's Office at Greenbelt

Frank Paul Lukacs
Plaintiff
v.
Donna E. Shalala, et al
Defendants

September 08, 1998
Civil Action Number
PJM-96-2913

Motion for Leave to File an Amended Complaint

Plaintiff respectfully submits this motion for leave to file an amended complaint.

The reasons for this motion are set forth in the accompanying memorandum.

Respectfully Submitted

Frank Paul Lukacs

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Mailed September 09, 1998

Frank Paul Lukacs
Plaintiff

v.

Donna E. Shalala, et al
Defendants

Civil Action Numbers
PJM-97- 379
PJM-97-3359
PJM-97-3495

ORDER

After a review of the various causes of action set forth in the complaints in the captioned cases, the Court finds them to be duplicative of claims set forth by Pro Se Plaintiff Lukacs in two other cases before this Court, Civil Action No. PJM-96-2913 and Civil Action No. PJM-97-3483. Accordingly it is this 31st day of August, 1998

ORDERED that Civil Action No. PJM-97-379, Civil Action No. PJM-97-3359, and Civil Action No. PJM-97-3495 are hereby Dismissed; and it is further

ORDERED that all pending Motions are hereby rendered MOOT.

Signature of Peter J. Messitte

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Frank Paul Lukacs
Plaintiff

v.

Donna E. Shalala, et al
Defendants

Civil Action Number
PJM-96-2913

ORDER

It is this 18th day of September, 1998, ORDERED that the time for the Defendants to answer, move, or otherwise plead to Plaintiff's Amended Complaint is extended through and including September 30, 1998.

Signature of William Connelly

_____

William Connelly
United States Magistrate Judge

cc: Judge Peter Messitte

APPENDIX K

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770

Mailed September 17, 1998

Frank Paul Lukacs
P. O. Box 3143
McLean, Virginia 22103-3143

Re: Case No. **PJM-97-3483**

Dear Mr. Lukacs:

The Clerk received your "Motion for Leave" [and] "Amended Complaint" on 9/15/98; however, it is deficient in the areas checked below:

Pursuant to the verbage [sic] in attached Memorandum Opinion and Order (signed by Judge Peter J. Messitte, dated September 8, 1998), [and not filed until September 15, 1998], no further pleadings are to be filed.

The Clerk is directed to return the above paper(s) to counsel.

Very truly yours,
Signature of Peter J. Messitte, Jr.

_____

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Date Stamped:
Filed US District Court
District of Maryland
October 08, 1998
Clerk's Office at Greenbelt

Frank Paul Lukacs
Plaintiff
v.
Donna E. Shalala, et al
Defendants

October 08, 1998
Civil Action Number
PJM-96-2913

Plaintiff's Motion for Judgment by Default According to Federal Rules of Civil Procedure Rule 55

Plaintiff respectfully submits this motion for judgment by default according to Federal Rules of Civil Procedure Rule 55.

The reasons for this motion are set forth in the accompanying memorandum.

Respectfully Submitted
Frank Paul Lukacs

APPENDIX M

Some of the many individual elements of the United States federal government's and the National Institutes of Health's so called affirmative action or diversity programs for minorities and females and hispanics include but are not limited to such elements as the Federal Equal Opportunity Recruitment Program (FEORP); the Affirmative Employment Program (AEP); the legislation of 5 U.S.C. §7201 (a); the legislation of 5 U.S.C. §7201 (c); the legislation of 5 U.S.C. §7201 (d); the elements of 5 C.F.R. §720.202 (e), especially those referring to "qualifiable" minorities and women, namely "those who have the potential but do not presently meet valid qualification requirements", namely those minorities and women who do not have even the minimum "training, work experience, or both" for the advertised job vacancy announcements, which are discriminatory and without authority in 5 U.S.C. §7201, the statute which the regulations supposedly implement; the elements of 5 C.F.R. §720.202 (a), especially those authorizing females to also receive the benefits of so called affirmative action for minorities, which are discriminatory and without authority in 5 U.S.C. §7201, the statute which the regulations supposedly implement, and which only authorizes minorities to receive the benefits of so called affirmative action; the elements of 5

C.F.R. §720.202 (a) and the elements of 5 C.F.R. §720.205(e), especially those referring to the appropriate labor force, which is taken as the higher of the national or local minority or female labor force for the purposes of comparison, and which are discriminatory and without authority in 5 U.S.C. §7201, the statute which the regulations supposedly implement, which statute only authorizes use of the minority national labor force; the Federal Equal Opportunity Recruitment Program regulations on so called "underrepresentation", in which the "Data that is used in determining underrepresentation is (1) An underrepresentation determination is a comparison between (a) the percentage of a particular minority/sex group in a category of federal employment and (b) the percentage of that same group in the civilian labor force (either nationally or locally)" and in which "It is important to recognize that determinations of underrepresentation made in support of FEORP are based on civilian labor force data without regard to the availability of minorities or women in the labor force identified as having (or potentially having) the skills needed to perform in various occupations and pay grades.", and the mandatory classifications on the basis of race and gender which are discriminatory; the United States Equal Employment Opportunity Commission's "Instructions for the Development

and Submission of Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports, and Annual Plan Updates"; Executive Order 11478 as amended by Executive Order 12106 which established requirements for federal agency Affirmative Employment Programs; the Office of Personnel Management classification of minorities by race and national origin under the Federal Equal Opportunity Recruitment Program, which includes everyone from every continent to receive the benefits of so called affirmative action for minorities except caucasians having origins in Europe, and which includes everyone of hispanic origin on the basis of the Spanish language or surname to also receive the benefits of so called affirmative action for minorities; the purposeful exclusion of relevant qualifications and merit from consideration for Federal Equal Opportunity Recruitment Program designated job openings in order to greatly increase the probability, to almost the point of certainty, of a minimally qualified or even a totally unqualified minority or female or hispanic to be evaluated as being highly qualified and to be selected for job openings, and to correspondingly greatly decrease the probability, to almost the point of certainty, of a much more qualified white male, especially one over forty years of age and of Hungarian origin, to be evaluated as being highly qualified and to be selected for the advertised job vacancy

announcements; the failure of federal agencies to comply with the mandatory 30 Day processing time for informal equal employment opportunity complaints, which is a violation of 29 C.F.R. §1614, and the failure of federal agencies to comply with the mandatory 180 days for completion of investigation of formal equal employment opportunity complaints, which is a violation of 29 C.F.R. §1614, with EEO complaints from white males challenging the legality and constitutionality of so called affirmative action for minorities and females and hispanics being purposefully delayed or simply intentionally not being independently processed or investigated for years precisely because they are EEO complaints from a white male complaining about so called affirmative action programs for minorities and females and hispanics, while at the same time other EEO complaints during those same years are being actively and aggressively processed and actively and aggressively investigated simply because these EEO complaints are from minorities or females or hispanics; the failure of federal agencies to seriously consider, interview, or select white males for Federal Equal Opportunity Recruitment Program designated job openings; the preferences and favoritism for minorities and women under the Federal Equal Opportunity Recruitment Program and the Affirmative Employment Program, and the creation of barriers to the selection, hiring, and promotion of white males,

especially those most qualified and over forty years of age; the Equal Employment Opportunity Commission's (EEOC) responsibility to establish and maintain discriminatory affirmative action programs for minorities and females, and their dual mutually exclusive functions to ensure real equal employment opportunity regardless of race or sex or national origin or age, which represent a conflict of interest and have the appearance of partiality, prejudice, and bias, and which are discriminatory against caucasian males; the federal government officials' responsibilities to establish and maintain discriminatory affirmative action programs for minorities and females, and their dual mutually exclusive functions to ensure real equal employment opportunity regardless of race or sex or national origin or age, which represent a conflict of interest and have the appearance of partiality, prejudice, and bias, and which are discriminatory against caucasian males; the Federal Equal Opportunity Recruitment Program and Affirmative Employment Program requirement for the justification and approval of the selection of the best qualified white male, but not for the selection of even minimally qualified or even totally unqualified minorities and females; the mandatory classification of applicants and candidates for job vacancy announcements by race and gender, and especially such mandatory classifications by race and gender by none

other than the selecting official as the selecting official interviews the applicants and candidates; the selection by the FEORP Operations Coordinator under the Federal Equal Opportunity Recruitment Program (FEORP) of Qualifications Review Board (QRB) members, who evaluate and refer eligible candidates for selection, who are themselves minorities and women, and who promote the selection of minorities and women and the nonselection of white males; the violation of the requirement to rank or group candidates and refer only a reasonable number (normally 3 to 5) of the best qualified candidates for selection, [and in fact in two job vacancy announcements herein cited referring a total of sixty two and sixty nine supposedly "best qualified" candidates to the selecting official], in order to give preference and favoritism to minimally qualified minorities and females, which is discriminatory against best qualified white males; and the Career Opportunities Training Program ("COTA"), and "STRIDE, START, and ACCESS", in which minority and female and hispanic "employees who do not meet the basic qualifications requirements as found in the Qualifications Standards Handbook", in other words minorities and females and hispanics who are not just minimally qualified but who are in fact totally unqualified for the job vacancy announcement, "will be given the opportunity to be competitively selected and trained for the position", which means that

these totally unqualified people will only compete with other totally unqualified people and will be selected and hired anyway for the job vacancy announcement for which they are totally unqualified as so called "trainees", rather than white males who are already highly qualified for the position, [which is precisely what happened to plaintiff-appellant in one job vacancy announcement], and then after being hired and while receiving a full salary they will be so called "trained" for the duties and responsibilities of the positions which they cannot perform but for which positions they have already been hired."